

potential safety hazards over the life cycle of the equipment;

(3) Identify safety issues during design reviews;

(4) Eliminate or reduce the risk posed by each hazard identified to an acceptable level using a formal safety methodology such as MIL-STD-882;

(5) Monitor the progress in resolving safety issues, reducing hazards, and meeting safety requirements;

(6) Develop a program of testing or analysis, or both, to demonstrate that safety requirements have been met; and

(7) Impose operational limitations, as necessary, on the operation of the equipment if the equipment cannot meet safety requirements.

(c) Each railroad shall maintain sufficient documentation to demonstrate how the operation and design of its Tier II passenger equipment complies with safety requirements or, as appropriate, addresses safety requirements under paragraphs (a)(4) and (b)(7) of this section. Each railroad shall maintain sufficient documentation to track how safety issues are raised and resolved.

(d) Each railroad shall make available to FRA for inspection and copying upon request each safety plan required by this section and any documentation required pursuant to such plan.

[64 25660, May 12, 1999, as amended at 67 FR 19994, Apr. 23, 2002]

APPENDIX A TO PART 238—SCHEDULE OF CIVIL PENALTIES¹

Section	Violation	Willful violation
SUBPART A—GENERAL		
238.15 Movement of power brake defects:		
(b) Improper movement from Class I or IA brake test	5,000	7,500
(c) Improper movement of en route defect	2,500	5,000
(2), (3) Insufficient tag or record	1,000	2,000
(4) Failure to determine percent operative brake	2,500	5,000
(d) Failure to follow operating restrictions	5,000	7,500
(e) Failure to follow restrictions for inoperative front or rear unit	2,500	5,000
238.17 Movement of other than power brake defects: ¹		
(c)(4), (5) Insufficient tag or record	1,000	2,000
(d) Failure to inspect or improper use of roller bearings	2,500	5,000
(e) Improper movement of defective safety appliances	(1)	
238.19 Reporting and tracking defective equipment:		
(a) Failure to have reporting or tracking system	7,500	11,000
(b) Failure to retain records	2,000	4,000
(c) Failure to make records available	1,000	2,000
(d) Failure to list power brake repair points	2,000	4,000
SUBPART B—SAFETY PLANNING AND GENERAL REQUIREMENTS		
238.103 Fire protection plan/fire safety:		
(a) Failure to use proper materials	5,000	7,500
(b) Improper certification	1,000	2,000
(c) Failure to consider fire safety on new equipment	5,000	7,500
(d) Failure to perform fire safety analysis	5,000	7,500
(e) Failure to develop, adopt or comply with procedures	5,000	7,500
238.105 Train electronic hardware and software safety:		
(a), (b), (c) Failure to develop and maintain hardware and software safety	7,500	11,000
(d) Failure to include required design features	5,000	7,500
(e) Failure to comply with hardware and software safety program	5,000	7,500
238.107 Inspection, testing, and maintenance plan:		
(b) Failure to develop plan	7,500	11,000
(b)(1)–(5) Failure of plan to address specific item	3,000	6,000
(d) Failure to conduct annual review	5,000	7,500
238.109 Training, qualification, and designation program:		
(a) Failure to develop or adopt program	7,500	11,000
(b)(1)–(4) Failure of plan to address specific item	3,000	6,000
(b)(5)–(12) Failure to comply with specific required provision of the program	5,000	7,500
(b)(13) Failure to maintain adequate records	2,500	5,000
238.111 Pre-revenue service acceptance testing plan:		
(a) Failure to properly test previously used equipment	7,500	11,000
(b)(1) Failure to develop plan	7,500	11,000
(b)(2) Failure to submit plan to FRA	5,000	7,500
(b)(3) Failure to comply with plan	5,000	7,500
(b)(4) Failure to document results of testing	5,000	7,500

Section	Violation	Willful violation
(b)(5) Failure to correct safety deficiencies or impose operating limits	5,000	7,500
(b)(6) Failure to maintain records	3,000	6,000
(b)(7) Failure to obtain FRA approval	5,000	7,500
238.113 Emergency window exits	2,500	5,000
238.114 Rescue access windows	2,500	5,000
238.115 Emergency lighting	2,500	5,000
238.117 Protection against personal injury	2,500	5,000
238.119 Rim-stamped straight plate wheels	2,500	5,000
238.121 Emergency communication	2,500	5,000
238.123 Emergency roof access	2,500	5,000
SUBPART C—SPECIFIC REQUIREMENTS FOR TIER I EQUIPMENT		
238.203 Static end strength	2,500	5,000
238.205 Anti-climbing mechanism	2,500	5,000
238.207 Link between coupling mechanism and car body	2,500	5,000
238.209 Forward-facing end structure of locomotives	2,500	5,000
238.211 Collision posts	2,500	5,000
238.213 Corner posts	2,500	5,000
238.215 Rollover strength	2,500	5,000
238.217 Side structure	2,500	5,000
238.219 Truck-to-car-body attachment	2,500	5,000
238.221 Glazing	2,500	5,000
238.223 Fuel tanks	2,500	5,000
238.225 Electrical System	2,500	5,000
238.227 Suspension system	2,500	5,000
238.229 Safety appliances—general:		
(e) Failure to properly identify equipment (per car)	2,500	5,000
(g) Failure to adopt or comply with inspection plan	2,500	5,000
(h) Failure to use qualified person (per car)	2,500	5,000
(i) Failure to properly conduct initial or periodic inspection (per car)	2,500	5,000
(j) Failure to take proper remedial action (per car)	2,500	5,000
(k) Failure to maintain records (per car)	2,000	4,000
238.230 Safety appliances—new equipment:		
(b)(2) Failure to identify welded appliance (per car)	2,500	5,000
(b)(3) Failure to receive approval for use (per car)	2,500	5,000
(c)(2) Failure to make proper repair (per car)	2,500	5,000
238.231 Brake System (a)–(g), (i)–(n)	2,500	5,000
(h)(1), (2) Hand or parking brake missing or inoperative	5,000	7,500
(h)(3) Hand or parking brake inspection or record (per car)	2,500	5,000
(h)(4) Hand or parking brake not applied to hold unattended equipment or prematurely released	5,000	7,500
238.233 Interior fittings and surfaces	2,500	7,500
238.235 Doors	2,500	5,000
238.237 Automated monitoring	2,500	5,000
SUBPART D—INSPECTION, TESTING, AND MAINTENANCE REQUIREMENTS FOR TIER I EQUIPMENT		
238.303 Exterior mechanical inspection of passenger equipment:		
(a)(1) Failure to perform mechanical inspection	1 2,000	4,000
(a)(2) Failure to inspect secondary brake system	2,500	5,000
(b) Failure to perform inspection on car added to train	1 2,000	4,000
(c) Failure to utilize properly qualified personnel	2,000	4,000
(e)(1) Products of combustion not released outside cab	2,500	5,000
(e)(2) Battery not vented or gassing excessively	2,500	5,000
(e)(3) Coupler not in proper condition	2,500	5,000
(e)(4) No device under drawbar pins or connection pins	2,500	5,000
(e)(5) Suspension system and spring rigging not in proper condition	2,500	5,000
(e)(6) Truck not in proper condition	2,500	5,000
(e)(7) Side bearing not in proper condition	2,500	5,000
(e)(8) Wheel not in proper condition:		
(i), (iv) Flat spot(s) and shelled spot(s):		
(A) One spot 2½" or more but less than 3" in length	2,500	5,000
(B) One spot 3" or more in length	5,000	7,500
(C) Two adjoining spots each of which is 2" or more in length but less than 2½" in length	2,500	5,000
(D) Two adjoining spots each of which are at least 2" in length, if either spot is 2½" or more in length	5,000	7,500
(ii) Gouge or chip in flange:		
(A) More than 1½" but less than 1⅝" in length; and more than ½" but less than ⅝" in width	2,500	5,000
(B) 1⅝" or more in length and ⅝" or more in width	5,000	7,500
(iii) Broken rim	5,000	7,500
(v) Seam in tread	2,500	5,000

Section	Violation	Willful violation
(vi) Flange thickness of:	2,500	5,000
(A) $\frac{7}{8}$ " or less but more than.		
(B) $\frac{13}{16}$ " or less	5,000	7,500
(vii) Tread worn hollow	2,500	5,000
(viii) Flange height of:		
(A) $1\frac{1}{2}$ " or greater but less than $1\frac{5}{8}$ "	2,500	5,000
(B) $1\frac{5}{8}$ " or more	5,000	7,500
(ix) Rim thickness:		
(A) Less than 1"	2,500	5,000
(B) $\frac{15}{16}$ " or less	5,000	7,500
(x) Crack or break in flange, tread, rim, plate, or hub:		
(A) Crack of less than 1"	2,500	5,000
(B) Crack of 1" or more	5,000	7,500
(C) Break	5,000	7,500
(xi) Loose wheel	5,000	7,500
(xii) Welded wheel	5,000	7,500
(e)(10) Improper grounding or insulation	5,000	7,500
(e)(11) Jumpers or cable connections not in proper condition	2,500	5,000
(e)(12) Door or cover plate not properly marked	2,500	5,000
(e)(13) Buffer plate not properly placed	2,500	5,000
(e)(14) Diaphragm not properly placed or aligned	2,500	5,000
(e)(15) Secondary braking system not in operating mode or contains known defect	2,500	5,000
(e)(16) Roller bearings:		
(i) Overheated	5,000	7,500
(ii) Cap screw loose or missing	2,500	5,000
(iii) Cap screw lock broken or missing	1,000	2,000
(iv) Seal loose, damaged, or leaks lubricant	2,500	5,000
(e)(17) Air compressor inoperative	2,500	5,000
(g) Record of inspection:		
(1), (4) Failure to maintain record of inspection	5,000	4,000
(2) Record contains insufficient information	1,000	2,000
238.305 Interior mechanical inspection of passenger cars:		
(a) Failure to perform inspection	1,000	2,000
(b) Failure to utilize properly qualified personnel	1,000	2,000
(c)(1) Failure to protect against personal injury	2,500	5,000
(c)(2) Floors not free of condition that creates hazard	2,500	5,000
(c)(3) Access to manual door release not in place	2,000	4,000
(c)(4) Emergency equipment not in place	1,000	2,000
(c)(5) Emergency brake valve not stenciled or marked	2,500	5,000
(c)(6) Door or cover plates not properly marked	2,500	5,000
(c)(7) Safety signage not in place or legible	1,000	2,000
(c)(8) Trap door unsafe or improperly secured	2,500	5,000
(c)(9) Vestibule steps not illuminated	2,000	4,000
(c)(10) Door not safely operate as intended	2,500	5,000
(c)(11) Seat broken, loose, or not properly attached	2,500	5,000
(e) Record of inspection:		
(1), (4) Failure to maintain record of inspection	2,000	4,000
(2) Record contains insufficient information	1,000	1,000
(f) Record of inspection:		
(1), (4) Failure to maintain record of inspection	2,000	4,000
(2) Record contains insufficient information	1,000	2,000
238.307 Periodic mechanical inspection of passenger cars and unpowered vehicles:		
(a) Failure to perform periodic mechanical inspection	2,500	5,000
(b) Failure to utilize properly qualified personnel	2,500	5,000
(c)(1) Seat or seat attachment broken or loose	2,500	5,000
(c)(2) Luggage rack broken or loose	2,500	5,000
(c)(3) Bed, bunks, or restraints broken or loose	2,500	5,000
(c)(4) Emergency window exit not properly operate	2,500	5,000
(c)(5) Emergency lighting not operational	2,500	5,000
(c)(6) Switches not in proper condition	2,500	5,000
(c)(7) Coupler not in proper condition	2,500	5,000
(c)(8) Truck not equipped with securing arrangement	2,500	5,000
(c)(9) Truck center casting cracked or broken	5,000	7,500
(c)(10) General conditions endangering crew, passengers	2,500	5,000
(c)(13) Hand or parking brake test not performed	2,500	5,000
(d)(1) Manual door release not operate as intended	2,500	5,000
(d)(2) Hand or parking brake inspection not performed	2,500	5,000
(e)(1) Failure to maintain record of inspection	2,000	4,000
(i)–(iv) Record contains insufficient information	1,000	2,000
(f)(1) Record of inspection:		
(i) Failure to maintain record of inspection	2,000	4,000
(ii) Record contains insufficient information	1,000	2,000
238.309 Periodic brake equipment maintenance:		

Federal Railroad Administration, DOT

Pt. 238, App. A

Section	Violation	Willful violation
(b) Failure to perform on MU locomotive	2,500	5,000
(c) Failure to perform on conventional locomotive	2,500	5,000
(d) Failure to perform on passenger coaches or other unpowered vehicle	2,500	5,000
(e) Failure to perform on cab car	2,500	5,000
(f) Record of periodic maintenance:		
(1), (2) Failure to maintain record or stencil	2,000	4,000
238.311 Single car tests:		
(a) Failure to test in accord with required procedure	2,500	5,000
(b) Failure to utilize properly qualified personnel	2,500	5,000
(c), (e) Failure to perform single car test	2,500	5,000
(f) Improper movement of car for testing	2,000	4,000
(g) Failure to test after repair or replacement of component	2,000	4,000
238.313 Class I brake test:		
(a) Failure to perform on commuter or short distance intercity passenger train	¹ 10,000	15,000
(b) Failure to perform on long-distance intercity passenger train	¹ 10,000	15,000
(c) Failure to perform on cars added to passenger train	¹ 5,000	7,500
(d) Failure to utilize properly qualified personnel	5,000	7,500
(f) Passenger train used from Class I brake test with less than 100% operative brakes	5,000	7,500
(g) Partial failure to perform inspection on a passenger train	5,000	7,500
(3) Failure to adjust piston travel (per car)	2,500	5,000
(h) Failure to maintain record	2,000	4,000
(j) Failure to perform additional Class I brake test	5,000	7,500
(j)(3) Failure to maintain record	2,000	4,000
238.315 Class IA brake test:		
(a) Failure to perform inspection	¹ 5,000	7,500
(d) Failure to utilize properly qualified personnel	2,500	5,000
(e) Passenger train used from Class IA brake test with improper percentage of operative brakes	5,000	7,500
(f) Partial failure to perform inspection on passenger train	2,500	5,000
238.317 Class II brake test:		
(a) Failure to perform inspection	¹ 2,500	5,000
(b) Failure to utilize properly qualified personnel	2,500	5,000
(c) Improper use of defective equipment from Class II brake test	2,500	5,000
238.319 Running brake tests:		
(a), (b) Failure to perform test	2,000	4,000
238.321 Out-of-service credit	1,000	2,000
SUBPART E—SPECIFIC REQUIREMENTS FOR TIER II PASSENGER EQUIPMENT		
238.403 Crash energy management	2,500	5,000
238.405 Longitudinal static compressive strength	2,500	5,000
238.407 Anti-climbing mechanism	2,500	5,000
238.409 Forward end structures of power car cabs:		
(a) Center collision post	2,500	5,000
(b) Side collision posts	2,500	5,000
(c) Corner posts	2,500	5,000
(d) Skin	2,500	5,000
238.411 Rear end structures of power car cabs:		
(a) Corner posts	2,500	5,000
(b) Collision posts	2,500	5,000
238.413 End structures of trailer cars	2,500	5,000
238.415 Rollover strength	2,500	5,000
238.417 Side loads	2,500	5,000
238.419 Truck-to-car-body and truck component attachment	2,500	5,000
238.421 Glazing:		
(b) End-facing exterior glazing	2,500	5,000
(c) Alternate glazing requirements	2,500	5,000
(d) Glazing securement	1,000	2,000
(e) Stenciling	2,500	5,000
238.423 Fuel tanks:		
(a) External fuel tanks	2,500	5,000
(b) Internal fuel tanks	2,500	5,000
238.425 Electrical system:		
(a) Circuit protection	2,500	5,000
(b) Main battery system	2,500	5,000
(c) Power dissipation resistors	2,500	5,000
(d) Electromagnetic interference and compatibility	2,500	5,000
238.427 Suspension system	2,500	5,000
238.429 Safety Appliances:		
(a) Couplers	5,000	7,500
(b) Hand/parking brakes	5,000	7,500
(d) Handrail and handhold missing	2,500	5,000
(d)(1)–(8) Handrail or handhold improper design	2,500	5,000
(e) Sill step missing	5,000	7,500

Section		Violation	Willful violation
(e)(1)–(11) Sill step improper design		2,500	5,000
(g) Optional safety appliances		2,500	5,000
238.431	Brake system	2,500	5,000
238.433	Draft System	2,500	5,000
238.435	Interior fittings and surfaces	2,500	5,000
238.437	[Reserved]		
238.439	Doors:		
(a) Exterior side doors		2,500	5,000
(b) Manual override feature		2,500	5,000
(c) Notification to crew of door status		2,500	5,000
(d) Emergency back-up power		2,500	5,000
(f) End door kick-out panel or pop-out window		2,500	5,000
(g) Marking and instructions		[Reserved]	
238.441	Emergency roof access	2,500	5,000
238.443	Headlights	2,500	5,000
238.445	Automated monitoring	2,500	5,000
238.447	Train operator's controls and power car cab layout	2,500	5,000
SUBPART F—INSPECTION, TESTING, AND MAINTENANCE REQUIREMENTS FOR TIER II PASSENGER EQUIPMENT			
238.503	Inspection, testing, and maintenance requirements:		
(a) Failure to develop inspection, testing, and maintenance program or obtain FRA approval		10,000	15,000
(b) Failure to comply with provisions of the program		5,000	7,500
(c) Failure to ensure equipment free of conditions which endanger safety of crew, passengers, or equipment		2,500	5,000
(d) Specific safety inspections:			
(1)(i) Failure to perform Class I brake test or equivalent		10,000	15,000
(1)(ii) Partial failure to perform Class I brake test or equivalent		5,000	7,500
(2)(i) Failure to perform exterior mechanical inspection		¹ 2,000	4,000
(2)(ii) Failure to perform interior mechanical inspection		¹ 1,000	2,000
(g) Failure to perform scheduled maintenance as required in program		2,500	5,000
(h) Failure to comply with training, qualification and designation program		5,000	7,500
(i) Failure to develop or comply with standard procedures for performing inspection, tests, and maintenance		2,500	5,000
(j) Failure to conduct annual review		5,000	7,500
(k) Failure to establish or utilize quality control program		5,000	7,500
SUBPART G—SPECIFIC SAFETY PLANNING REQUIREMENTS FOR TIER II PASSENGER EQUIPMENT			
238.603	Safety plan:		
(a) Failure to develop safety operating plan		7,500	11,000
(b) Failure to develop procurement plan		7,500	11,000
(1)–(7) Failure to develop portion of plan		2,500	5,000
(c) Failure to maintain documentation		2,500	5,000

¹ A penalty may be assessed against an individual only for a willful violation. Generally when two or more violations of these regulations are discovered with respect to a single unit of passenger equipment that is placed or continued in service by a railroad, the appropriate penalties set forth above are aggregated up to a maximum of \$16,000 per day. However, failure to perform, with respect to a particular unit of passenger equipment, any of the inspections and tests required under subparts D and F of this part will be treated as a violation separate and distinct from, and in addition to, any substantive violative conditions found on that unit of passenger equipment. Moreover, the Administrator reserves the right to assess a penalty of up to \$105,000 for any violation where circumstances warrant. See 49 CFR part 209, appendix A.

Failure to observe any condition for movement of defective equipment set forth in § 238.17 will deprive the railroad of the benefit of the movement-for-repair provision and make the railroad and any responsible individuals liable for penalty under the particular regulatory section(s) concerning the substantive defect(s) present on the unit of passenger equipment at the time of movement.

Failure to observe any condition for the movement of passenger equipment containing defective safety appliances, other than power brakes, set forth in § 238.17(e) will deprive the railroad of the movement-for-repair provision and make the railroad and any responsible individuals liable for penalty under the particular regulatory section(s) contained in part 231 of this chapter or § 238.429 concerning the substantive defective condition.

The penalties listed for failure to perform the exterior and interior mechanical inspections and tests required under § 238.303 and § 238.305 may be assessed for each unit of passenger equipment contained in a train that is not properly inspected. Whereas, the penalties listed for failure to perform the brake inspections and tests under § 238.313 through § 238.319 may be assessed for each train that is not properly inspected.

² The penalty schedule uses section numbers from 49 CFR part 238. If more than one item is listed as a type of violation of a given section, each item is also designated by a "penalty code," which is used to facilitate assessment of civil penalties, and which may or may not correspond to any subsection designation(s). For convenience, penalty citations will cite the CFR section and the penalty code, if any. FRA reserves the right, should litigation become necessary, to substitute in its complaint the CFR citation in place of the combined CFR and penalty code citation, should they differ.

[64 FR 25660, May 12, 1999, as amended at 65 FR 41310, July 3, 2000; 67 FR 19994, Apr. 23, 2002; 72 FR 51198, Sept. 6, 2007; 73 FR 6413, Feb. 1, 2008; 73 FR 79704, Dec. 30, 2008; 77 FR 24422, Apr. 24, 2012]